

**RULES OF THE BOARD OF ADJUSTMENT
OF THE TOWN OF FENWICK ISLAND, DELAWARE**

1. OFFICERS

Each year, the Board of Adjustment shall elect a Chairman, Vice-Chairman and a Secretary from the members of the Board.

2. MEETINGS

- (a) Meetings shall be held at the call of the Chairman in response to recognized needs for a meeting and/or when requested by two (2) or more members of the Board. All meetings and hearings shall be open to the public. The Board may make, alter and rescind rules so long as they are consistent with the ordinances of the Town of Fenwick Island, Delaware, and/or Delaware Code and with the concurrence of three (3) or more members of the Board. The Board shall keep minutes of its meetings and shall keep an electronic record of the proceedings of hearings along with any written or graphic material that is filed in the Town Municipal Building and will be available for study by the parties in interest and copies made available at cost. For serious and/or potentially controversial hearings, a court reporter should be hired rather than relying on tape recorded cassettes.
- (b) The presence of three (3) members shall constitute a quorum. The affirmative vote of a majority of the quorum present shall be required to grant any appeals from the decision of the Building Inspector, any requests for a variance, or any requests for a special exception.

3. APPEAL TO THE BOARD OF ADJUSTMENT

Appeals to the Board will be considered for acceptance when received in appropriate form:

- (a) Any person who claims to have been aggrieved by an action or decision of the Building Official and/or the Building Committee; or
- (b) Any officer, department, board or bureau of the municipality affected by an action or decision of the Building Official and/or Building Committee.
- (c) In the case of a denial of a building permit application, the appeal shall be filed within ten (10) days of the notification of the denial.

- (d) In the case of an approval of a building permit application, the appeal shall be filed no later than 20 days after the start of work authorized by the building permit.
- (e) In all other cases, the appeal shall be filed within thirty (30) days of the action or decision by which the appellant claims to have been aggrieved.
- (f) In all cases, the notice of appeal shall specify the ground thereof and shall be filed with the officer from whom the appeal is taken and also with the Board. The filings may be done through the office of the Town Administrator, who will notify the officer addressed and the Chairman of the Board of Adjustment.
- (g) An appeal stays all proceedings and furtherance of the action appealed from unless the officer from whom the appeal is taken certifies to the Board of Adjustment after the notice of appeal has been filed with the officer that, by reason of facts stated in the certificate, a stay would, in the officer's opinion, cause imminent peril to life or property. No hearing shall be granted in response to any notice of appeal that is not filed within the time specified and/or does not specify the grounds for the appeal and/or does not come from a person who can convincingly claim to be aggrieved.

The Chairman of the Board of Adjustment (or, in his/her absence, the Vice Chairman) shall have the responsibility to review notices of appeal, both for timeliness and required content; and, if all is in proper order, shall set a time for the hearing of the appeal.

When an appeal is accepted for consideration, the Building Official shall be notified and he/she shall have all activity on that project stopped and any permit issued shall be considered to be stayed until a decision is rendered by the Board. When he/she has been notified of an appeal, the Building Official shall also physically deliver to the custody of the Board of Adjustment all papers constituting the record relating to the appeal.

4. HEARINGS

When a notice of appeal is accepted by the Board Chairman, a hearing will be scheduled as soon as practical and will conform to the following procedure:

- (a) Notice of a hearing shall be given to the public via an ad in a local newspaper and the Town bulletin board. Notification shall be given by first class mail to property owners within 250 feet of the boundaries of the property under appeal. The appellant, the owner of the project involved, the Building Official, the President of Town Council and the Town Administrator shall be notified by

letter. Notice of the hearing shall be conspicuously posted on the affected tract of land.

- (b) The hearings shall be conducted in public at the Town Hall by the Board with decisions made at the hearing or as soon thereafter as practical. The Board of Adjustment shall not be required to decide any proceeding immediately following the close of the hearing, but may table action on same in order to consult with legal counsel, review the minutes or take the matter under consideration. Any oral discussion of or vote upon the application by the Board of Adjustment shall be deemed to be in the nature of preliminary deliberation to the rendering of a final written decision and only the written decision, as adopted by a majority of the Board of Adjustment, shall constitute the decision of the Board of Adjustment. Deliberations by the Board prior to decisions shall be made in public. Decisions shall be confirmed in writing to those receiving notification of the hearing. Additionally, a copy shall be posted on the bulletin board at the Town Hall for a period of thirty (30) days. The document recording the decision will include the reasoning upon which the decision was based. In the event decisions include performance requirements, these requirements shall be included in the written record of the decision and shall also be included in the revised building permit. A copy of the decision shall be delivered to the appellant and the affected party within seven days of the decision. A copy of the decision shall be permanently recorded in Town office of the Town of Fenwick Island.

5. FORMAT FOR HEARINGS

Hearings shall be conducted under the following guidelines:

- (a) The Chairman shall conduct the meeting by procedures he/she feels will best allow the appeal and those counteracting to the appeal to be heard in a fair and orderly manner so the alleged aggrieved party will be fully heard and will be given the opportunity to obtain an understanding for the decisions made concerning his/her appeal.
- (b) The hearings should be opened with the Chairman outlining the procedures that will be followed for the hearing, such as:
 - (1) Introduction. The Chairman of the Board shall identify the application, the general nature of the proceeding (appeal, variance, special exception), the party filing same and shall identify and enter into the record all notices and exhibits in the file given in connection with the proceedings.

- (2) Background. The Town Building Official, Town Administrator or other appropriate Town official shall speak first, giving a brief synopsis of the matter to be heard. That individual should identify, in chronological sequence, the application and accompanying exhibits as well as any other pertinent exhibits or unprivileged letters in the Town official's file pertaining to the application under consideration. That Town official should identify the property involved by reference to the appropriate Town Map (street map or zoning map) and identify the issue(s) which is/are before the body, noting the most pertinent ordinance section(s) which the Town official believes are at issue.
- (3) All persons who make presentations shall identify themselves and be required to take an oath.
- (4) Applicants/Appellants may appear with or without legal counsel.
 - [a] Upon the conclusion of each witness' initial testimony, members of the Board of Adjustment and or the Board of Adjustment's attorney shall have an opportunity to ask questions of and cross-examine the witness. Thereafter, other parties to the proceedings shall be permitted to a brief opportunity to ask questions or cross-examine the witness. Depending upon the number of active participants at the proceedings desiring to question the witness, the Chairman shall be authorized to use reasonable discretion to terminate or limit cross-examination by multiple parties of the witness.
 - [b] Following the initial round of questions and/or cross-examination, the applicant/appellant shall be provided a brief opportunity to present additional "redirect" testimony from the witness, which may, in the Chairman's discretion, be followed by another round of re-cross-examination.
- (5) Any person shall be heard in support of the appeal.
- (6) Any person shall be heard against granting the appeal.
- (7) Open questions and comments from members of the appellant or his/her representative or to the Building Official or to any other person who has given testimony or is expert in the question involved in the appeal.

- (8) Open questions and comments from members to the appellant or his/her representative or to the Building Official or to any other person who has given testimony or is expert in the question involved in the appeal.
- (9) At the conclusion of all evidence of public statements of those opposing the application, the applicant shall be given a brief opportunity to submit additional testimony or evidence in the form of "rebuttal". The same procedures governing direct examination, cross-examination, and redirect examination shall apply to such rebuttal evidence.
- (10) Open questions and comments from the attending public and the reading of appropriate letters from concerned individuals.
- (11) Summation by the appellant.
- (12) Summation by the respondent.
- (13) Final rebuttal by appellant, limited to matter raised during the respondent's summation that had not previously been addressed by the appellant.
- (14) Action by the Board.

6. EX PARTE COMMUNICATIONS

Members of the Board shall not communicate, directly or indirectly, with any party or his representative in connection with any issue involved, except upon notice and opportunity for all principal parties to participate and shall not take notice of any communication, reports, staff memoranda, or other materials unless the parties are afforded an opportunity to contest the materials so noticed and shall not inspect the site or its surrounding with any party or his/her representative unless all principal parties are given the opportunity to be present.

7. DISTRIBUTION OF RULES

These Rules and any future amendments shall be posted on the Town Hall bulletin boards for a period of thirty (30) days, copies of same shall be distributed to Town Council members. The same shall also be formally presented to the Town Council at its next regular meeting along with a request for its inclusion in the Council's minutes.

8. ADOPTION

These Rules of the Board of Adjustment of the Town of Fenwick Island, Delaware, were first adopted by the Board on July 30, 1985.

Sections 1, 2, 3, 4, & 5 amended on November 21, 1997.

Rules in their entirety, including an addition to Section 2(b), amended on February 26, 2007.

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